

AMENDED IN ASSEMBLY APRIL 20, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1240

Introduced by Assembly Member Levine

February 22, 2005

~~An act to amend Section 25214.8 of the Health and Safety Code, relating to hazardous waste. An act to repeal and add Article 10.2 (commencing with Section 25214.5) of Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous waste.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1240, as amended, Levine. Mercury.

~~Existing~~

(1) Existing law requires any mercury-containing vehicle light switch, as defined, that is removed from a vehicle to be subject to the regulations adopted by the Department of Toxic Substances Control regarding the management of universal waste and other applicable regulations, and requires the department to take specified actions with regard to the safe removal and disposal of those switches. The department is required to submit a specified report, by January 1, 2004, to the Legislature regarding these requirements. Existing law provides that a violation of the Hazardous Waste Control Law is a crime.

This bill would ~~change the date when the report is due to January 1, 2007, and would require the report to include other, specified information regarding automobile dismantlers and appliance recycling facilities~~ repeal those provisions relating to mercury-containing vehicle light switches. The bill would establish the Mercury Switch Removal Act of 2005, and would require manufacturers of vehicles sold in the state to develop, in consultation with the department, a

mercury switch removal plan, as specified. The bill would require the department to review and approve the mercury switch removal plan. This bill would impose an unspecified administrative penalty against a vehicle manufacturer for each day after July 1, 2006, in which the manufacturer fails to submit the plan to the department.

The bill would require a vehicle recycler or a scrap recycling facility to remove all mercury switches from an end-of-life vehicle unless the mercury switch is inaccessible due to significant damage to the vehicle surrounding the location of the switch. The bill would require the mercury switch to be removed before the end-of-life vehicle is intentionally flattened, crushed, baled, or shredded. The bill would require the vehicle recycler or the scrap recycling facility to maintain a record of the mercury switches removed and the vehicle identification number of each vehicle from which mercury switches are removed. The bill would provide partial reimbursement to vehicle recyclers and scrap recycling facilities for each mercury switch that is removed from an end-of-life vehicle and provide for the safe handling of the removed mercury switches.

The bill would require the department to submit a report to the Legislature on the implementation of the mercury switch removal program with information, as specified.

The bill would impose administrative civil, civil, and criminal penalties on a person who violates the requirements of the bill, and a violation of the requirements of the bill would also be a violation of the Hazardous Waste Control Law. Therefore, the bill would create new crimes, thereby creating a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 25214.8 of the Health and Safety Code~~
2 ~~is amended to read:~~

1 *SECTION 1. Article 10.2 (commencing with Section 25214.5)*
2 *of Chapter 6.5 of Division 20 of the Health and Safety Code is*
3 *repealed.*

4 *SEC. 2. Article 10.2 (commencing with Section 25214.5) is*
5 *added to Chapter 6.5 of Division 20 of the Health and Safety*
6 *Code, to read:*

7
8 *Article 10.2. Mercury Switch Removal*
9

10 *25214.5. This act shall be known and may be cited as the*
11 *“Mercury Switch Removal Act of 2005.”*

12 *25214.5.1. The Legislature finds and declares all of the*
13 *following:*

14 *(a) Mercury is a persistent and toxic pollutant that*
15 *bioaccumulates in the environment.*

16 *(b) Forty-four states, including California, have issued fish*
17 *advisories that warn certain individuals to restrict or avoid*
18 *consuming fish from bodies of water contaminated with mercury.*

19 *(c) The United States Food and Drug Administration has*
20 *advised pregnant women and women of childbearing age who*
21 *may become pregnant not to eat shark, swordfish, king mackerel,*
22 *and tilefish due to methylmercury contamination.*

23 *(d) According to estimates of the United States Environmental*
24 *Protection Agency, over 600,000 babies born annually are at risk*
25 *for adverse neurodevelopmental effects from in utero exposure to*
26 *methylmercury resulting from the consumption of mercury*
27 *contaminated fish.*

28 *(e) Recent findings show that historic and current use of*
29 *mercury in vehicles can cause the release of as much as 10 tons*
30 *of mercury to the nation’s environment each year.*

31 *(f) Reliable estimates indicate that iron and steel*
32 *manufacturing plants are one of the largest sources of mercury*
33 *emissions and the main feed stock for these plants is scrap metal,*
34 *which includes shredded end-of-life vehicles, some of which*
35 *contain mercury in switches that can be emitted to the*
36 *atmosphere when the scrap metal is melted in high-temperature*
37 *processes to convert it into new iron and steel products.*

38 *(g) The United States Environmental Protection Agency*
39 *recently finalized regulations that would require certain iron and*

1 *steel foundries to implement work practice standards to exclude*
2 *mercury switches from the scrap metal feed materials.*

3 *(h) Removal of mercury switches from end-of-life vehicles*
4 *before they are crushed or shredded and preventing mercury*
5 *from entering high temperature processes is an effective way to*
6 *reduce mercury emissions into the environment.*

7 *(i) California law prohibits the sale of motor vehicles*
8 *manufactured after January 1, 2005, containing mercury*
9 *switches and the majority of vehicle manufacturers have*
10 *responsibly ceased using mercury switches in currently*
11 *manufactured vehicles.*

12 *(j) Over the next decade and beyond, millions of vehicles*
13 *containing mercury switches will be recycled.*

14 *(k) Vehicle mercury switch collection programs are being*
15 *established across the country to protect human health and the*
16 *environment.*

17 *(l) Iron and steel foundries, vehicle recyclers, and the*
18 *residents of the state would benefit from a statewide program*
19 *that removes mercury switches from end-of-life vehicles.*

20 *(m) It is in the public interest of the residents of the state to*
21 *reduce the quantity of mercury in the environment by removing*
22 *mercury switches from end-of-life vehicles in the state, by*
23 *creating a collection and recovery program for mercury switches*
24 *removed from end-of-life vehicles in the state, and by*
25 *establishing a system to store the mercury collected and*
26 *recovered from vehicle mercury switches in the event that*
27 *environmentally appropriate management technologies are not*
28 *available.*

29 *(n) The imposition of a recovery bounty fee and administrative*
30 *fee for each mercury switch removed would not result in the*
31 *imposition of a tax within the meaning of Article XIII A of the*
32 *California Constitution, because the amount and nature of the*
33 *fee has a fair and reasonable relationship to the adverse*
34 *environmental burdens imposed by the mercury switches in*
35 *vehicles and there is a sufficient nexus between the fees imposed*
36 *and the use of those fees to support the proper recycling or*
37 *disposal of mercury from vehicular switches.*

38 *25214.3. Unless the context clearly requires otherwise, for*
39 *the purposes of this article, the following terms have the*
40 *following meanings:*

1 (a) "Capture rate" means the annual removal, collection, and
2 recovery of mercury switches as a percentage of the total number
3 of mercury switches available for removal from end-of-life
4 vehicles.

5 (b) "End-of-life vehicle" means a vehicle that is sold, given,
6 or otherwise conveyed to a vehicle recycler or scrap recycling
7 facility for the purpose of recycling.

8 (c) "Manufacturer" means a person, firm, association,
9 partnership, corporation, governmental entity, organization,
10 combination, or joint venture that is the last person in the
11 production or assembly process of a vehicle that utilizes mercury
12 switches, or in the case of an imported vehicle, the importer or
13 domestic distributor of the vehicle.

14 (d) "Mercury switch removal plan" or "plan" means a plan
15 for removing, collecting, and recovering mercury switches from
16 end-of-life vehicles.

17 (e) "Mercury switch" means each mercury-containing
18 capsule, commonly known as a "bullet," that is part of a
19 convenience light switch assembly or part of an antilock braking
20 system assembly installed in a vehicle.

21 (f) "Scrap recycling facility" means all contiguous land and
22 structures, other appurtenances and improvement on land used
23 for processing and manufacturing scrap metal into usable grades
24 of metal and whose principal product is scrap iron, scrap steel,
25 or nonferrous metallic scrap for sale for remelting purposes.

26 (g) "Vehicle" means any passenger car, station wagon, truck,
27 van, or sport utility vehicle with a gross vehicle weight rating of
28 less than 12,000 pounds.

29 (h) "Vehicle recycler" means a person engaged in the
30 business of acquiring, dismantling, or destroying six or more
31 end-of-life vehicles in a calendar year for the primary purpose of
32 resale of their parts.

33 25214.5.3. (a) On or before July 1, 2006, every manufacturer
34 of vehicles sold in the state, individually or as part of a group of
35 manufacturers, in consultation with the department, shall
36 develop and submit a mercury switch removal plan to the
37 department for review and approval.

38 (b) The plan shall include, at a minimum, all of the following:

39 (1) Information identifying the make, model, and year of
40 vehicles that may contain one or more mercury switches; a

1 *description of the mercury switches; the location of these*
2 *mercury switches; and the safe and environmentally sound*
3 *methods for their removal from end-of-life vehicles. To the extent*
4 *that a manufacturer is uncertain as to the content of a switch*
5 *installed during the manufacture of a vehicle, the manufacturer*
6 *shall presume that the switch is a mercury switch.*

7 *(2) Educational materials to assist a vehicle recycler or a*
8 *scrap recycling facility in undertaking a safe and*
9 *environmentally sound method for the removal of the mercury*
10 *switches from end-of-life vehicles, including information on the*
11 *hazards related to, and the proper handling of, mercury.*

12 *(3) A proposal for the method of storage or disposal of the*
13 *mercury switches, including the method of packaging and*
14 *shipping mercury switches to authorized recycling, storage, or*
15 *disposal facilities.*

16 *(4) A proposal for the storage of mercury switches collected*
17 *and recovered from end-of-life vehicles in the event that*
18 *environmentally appropriate management technologies are not*
19 *available.*

20 *(5) A proposed system to be administrated by the department*
21 *that implements and finances the removal, collection, and*
22 *recovery of mercury switches from end-of-life vehicles that*
23 *includes the costs set forth in subdivision (d).*

24 *(c) The plan shall, to the extent practicable, utilize the existing*
25 *end-of-life vehicle recycling infrastructure. If the existing*
26 *end-of-life vehicle recycling infrastructure is not utilized, the*
27 *plan shall include the reasons for establishing a separate*
28 *infrastructure.*

29 *(d) The plan shall provide for the financing of the removal,*
30 *collection, and recovery system for mercury switches. These*
31 *costs shall be borne by the manufacturers of vehicles sold in the*
32 *state, and the manufacturers shall develop a method that ensures*
33 *the prompt payment to vehicle recyclers, scrap recycling*
34 *facilities, and the department, for costs associated with mercury*
35 *switch removal and disposal. Costs shall include, but are not*
36 *limited to, all of the following:*

37 *(1) A minimum recovery bounty of five dollars (\$5) for each*
38 *mercury switch removed by a vehicle recycler or a scrap*
39 *recycling facility pursuant to Section 25214.5.7 as partial*

1 compensation for the labor and other costs incurred in the
2 removal of the mercury switch.

3 (2) A minimum administrative payment of one dollar (\$1) for
4 each mercury switch removed by a vehicle recycler or by a scrap
5 recycling facility pursuant to Section 25214.5.7 as partial
6 compensation for the department for costs incurred in
7 administering and enforcing this article.

8 (3) Packaging in which to transport mercury switches to
9 recycling, storage, or disposal facilities.

10 (4) Shipping of mercury switches to recycling, storage, or
11 disposal facilities.

12 (5) Recycling, storage, or disposal of the mercury switches.

13 (6) The preparation and distribution to vehicle recyclers and
14 scrap recycling facilities of the educational materials required
15 pursuant to paragraph (2) of subdivision (b).

16 (7) Maintenance of all appropriate recordkeeping systems.

17 25214.5.4. (a) Within 90 days after receipt of a plan, the
18 department shall approve, disapprove, or conditionally approve
19 the entire plan. The department may solicit input from
20 representatives of vehicle recyclers, scrap recycling facilities,
21 and other stakeholders as the department deems appropriate.

22 (b) If the plan is approved, the manufacturer shall begin
23 implementation of the plan on or before January 1, 2007.

24 (c) If the plan is disapproved, the department shall inform the
25 manufacturer as to the reasons for the disapproval. The
26 manufacturer shall have 30 days thereafter to submit a plan.

27 25214.5.5. (a) The department may, on and after October 1,
28 2006, on behalf of a manufacturer, complete any portion of a
29 plan that has not been approved.

30 (b) The department may review an approved mercury switch
31 removal plan and recommend modifications to the plan at any
32 time upon a finding that the approved plan is deficient.

33 25214.5.6. (a) On and after January 1, 2007, every
34 manufacturer of vehicles sold in the state, individually or as part
35 of a group, shall provide to vehicle recyclers and scrap recycling
36 facilities containers suitable for storing mercury switches.

37 (b) Manufacturers of vehicles sold in this state shall provide
38 recyclers or scrap recycling facilities with reimbursement for
39 each mercury switch removed from a vehicle in this state in the
40 amount set forth in paragraph (1) of subdivision (d) of Section

1 24214.5.3 regardless of when these switches were removed from
2 the vehicles.

3 25214.5.7. (a) A vehicle recycler who sells, gives, or
4 otherwise conveys ownership of an end-of-life vehicle to a scrap
5 recycling facility for recycling shall remove all mercury switches
6 identified in the approved mercury switch removal plan from the
7 end-of-life vehicle prior to delivery to a scrap recycling facility,
8 unless a mercury switch is inaccessible due to significant damage
9 to the vehicle in the area surrounding the location of the mercury
10 switch, in which case the damage shall be noted on the normal
11 business records of the vehicle recycler who delivered the
12 end-of-life vehicle to the scrap recycling facility.

13 (b) Notwithstanding subdivision (a), a scrap recycling facility
14 may agree to accept an end-of-life vehicle that has not been
15 intentionally flattened, crushed, or baled, containing mercury
16 switches, in which case the scrap recycling facility shall be
17 responsible for removing the mercury switches identified in an
18 approved mercury switch removal plan before the end-of-life
19 vehicle is intentionally flattened, crushed, baled, or shredded,
20 except as provided in subdivision (a) relative to inaccessible
21 switches.

22 (c) A vehicle recycler or scrap recycling facility that removes
23 mercury switches shall maintain records documenting the
24 number of mercury switches collected, the number of end-of-life
25 vehicles containing mercury switches, and the number of
26 end-of-life vehicles processed for recycling. The records shall
27 include the vehicle identification number (VIN) of each vehicle
28 from which one or more mercury switches were removed, and the
29 number of mercury switches removed from that vehicle. These
30 records shall be made available for review by the department
31 upon the request of the department.

32 (d) No person shall represent that mercury switches have been
33 removed from an end-of-life vehicle being sold, given or
34 otherwise conveyed for recycling if that person has not removed
35 the mercury switches, or arranged with another person to
36 remove the mercury switches.

37 (e) Upon removal, mercury switches shall be collected, stored,
38 transported, and otherwise handled in accordance with all
39 applicable federal, state, and local laws and regulations
40 regarding mercury-contaminated products.

1 25214.5.8. On April 1, 2007, and annually thereafter, the
2 department shall report to the Legislature regarding the
3 implementation of the mercury switch removal plans during the
4 preceding calendar year. The report shall include, but need not
5 be limited to, the following:

6 (a) The number of mercury switches collected, the number of
7 end-of-life vehicles containing mercury switches, the number of
8 end-of-life vehicles processed for recycling, and a description of
9 how the mercury switches were managed.

10 (b) A description of the amounts paid to cover the costs of
11 implementing the mercury switch removal plans.

12 (c) A detailed description and documentation of the capture
13 rate achieved, with the goal of achieving a mercury switch
14 capture rate of at least 90 percent, consistent with the principle
15 that mercury switches shall be recovered unless the mercury
16 switch is inaccessible due to significant damage to the end-of-life
17 vehicle in the area surrounding where the mercury switch is
18 located.

19 (d) A description of additional or alternative actions that may
20 be implemented to improve the plan and its implementation in the
21 event that a mercury switch capture rate of at least 90 percent is
22 not achieved.

23 25214.5.9. (a) (1) Notwithstanding any other provision of
24 law, the department may assess an administrative civil penalty of
25 not more than seven thousand five hundred dollars (\$7,500) for a
26 first offense, not more than ten thousand dollars (\$10,000) for a
27 second offense and not more than twenty-five thousand dollars
28 (\$25,000) for a third and every subsequent offense for a violation
29 of this article. Each day that a violation continues shall
30 constitute an additional, separate, and distinct offense.

31 (2) After July 1, 2006, the department may assess an
32 administrative civil penalty of ____ dollars (\$____) per day
33 against a manufacturer that fails to submit a plan.

34 (3) No assessment may be levied pursuant to this subdivision
35 until after the violator has been notified by certified mail or
36 personal service. The notice shall include a reference to the
37 section of the statute, rule, regulation, or order violated, a
38 concise statement of the facts alleged to constitute a violation, a
39 statement of the amount of the administrative civil penalties to be
40 imposed, and a statement of the person's right to a hearing. The

1 ordered person shall have 20 calendar days from receipt of the
2 notice within which to deliver to the department a written request
3 for a hearing.

4 (4) After the hearing and upon finding that a violation has
5 occurred, the department may issue a final order after assessing
6 the amount of the fine specified in the notice. If no hearing is
7 requested, the notice shall become a final order after the
8 expiration of the 20-day period. Payment of the assessment is due
9 when a final order is issued or the notice becomes a final order.
10 The authority to levy an administrative civil penalty is in addition
11 to all other enforcement provisions in this article, and the
12 payment of any assessment shall not be deemed to affect the
13 availability of any other enforcement provisions in connection
14 with the violation for which the assessment is levied. The
15 department may compromise any administrative civil penalty
16 assessed under this section in an amount the department
17 determines appropriate.

18 (b) (1) Notwithstanding any other provision of law, a person
19 who violates this article, or any rule or regulation adopted
20 pursuant thereto, is subject upon order of a court to a civil
21 penalty not to exceed seven thousand five hundred dollars
22 (\$7,500) per day.

23 (2) A person who violates an administrative order or a court
24 order issued to enforce the requirements of this article, or who
25 fails to pay the administrative civil penalty assessed pursuant to
26 subdivision (a) in full, is subject upon order of a court to a civil
27 penalty not to exceed fifty thousand dollars (\$50,000) per day of
28 each violation.

29 (c) Notwithstanding any other provision of law, a person who
30 willfully or knowingly violates this article shall, upon conviction,
31 be guilty of a misdemeanor and shall be subject to a fine of not
32 less than two thousand five hundred dollars (\$2,500) and not
33 more than twenty-five thousand dollars (\$25,000) per day of
34 violation. A second offense under this subdivision shall subject
35 the violator to a fine of not less than five thousand dollars
36 (\$5,000) and not more than fifty thousand dollars (\$50,000) per
37 day of violation. A person who knowingly makes a false
38 statement, representation, or certification in any application,
39 record, or other document filed or required to be maintained
40 under this act, or who falsifies, tampers with or knowingly

1 renders inaccurate, any monitoring device or method required to
2 be maintained pursuant to this act, shall, upon conviction, be
3 subject to a fine of not more than ten thousand dollars (\$10,000).

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the
9 penalty for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition of a
11 crime within the meaning of Section 6 of Article XIII B of the
12 California Constitution.

13 ~~25214.8. (a) On or before January 1, 2007, the department~~
14 ~~shall report to the appropriate policy and fiscal committees of the~~
15 ~~Legislature on all of the following:~~

16 ~~(1) The success of efforts to remove mercury-containing~~
17 ~~vehicle light switches from vehicles pursuant to Section 25214.6.~~

18 ~~(2) Compliance with the requirement to remove~~
19 ~~mercury-containing appliance switches pursuant to Section~~
20 ~~42175 of the Public Resources Code.~~

21 ~~(3) The number of automobile dismantlers in this state who are~~
22 ~~licensed under Chapter 3 (commencing with Section 11500) of~~
23 ~~Division 5 of the Vehicle Code.~~

24 ~~(4) The number of automobile dismantlers included in~~
25 ~~paragraph (3) who have been issued a current and valid~~
26 ~~stormwater permit.~~

27 ~~(5) The number of automobile dismantlers included in~~
28 ~~paragraph (3) who have been issued a current and valid~~
29 ~~hazardous waste generator identification number.~~

30 ~~(6) The number of appliance recycling facilities in this state~~
31 ~~that have been issued a current and valid stormwater permit.~~

32 ~~(7) The number of appliance recycling facilities in this state~~
33 ~~that have been issued a current and valid hazardous waste~~
34 ~~generator identification number.~~

35 ~~(b) The Legislature hereby finds and declares both of the~~
36 ~~following:~~

37 ~~(1) The information required under paragraphs (3) to (7),~~
38 ~~inclusive, of subdivision (a) is readily obtainable from existing~~
39 ~~state agency databases.~~

- 1 ~~(2) Accordingly, the inclusion of that information in the report~~
- 2 ~~required under this section should not substantially increase the~~
- 3 ~~costs, or delay completion, of that report.~~